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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/173,134	10/15/1998	GEORGE S. GABRIEL	364106/176	1325
7590 01/15/2008 STROOCK & STROOCK & LAVAN 180 MAIDEN LANE NEW YORK, NY 10038				
EXAMINER NGUYEN, SON T				
ART UNIT 3643		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/173,134

**Applicant(s)**

GABRIEL ET AL.

**Examiner**

Son T. Nguyen

**Art Unit**

3643

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 8-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claim 11** is rejected under 35 U.S.C. 102(b) as being anticipated by Thomas (4690100).

Thomas teaches a cage assembly for housing a plurality of sizes of animals, the cage assembly comprising: a feeder assembly 64,66 having a flange (fig. 3, near ref. 96); and a cage bottom 90 for housing an animal, the cage bottom having a plurality of integral side walls 92 having recesses 96,98 therein being constructed and arranged to receive the flange of the feeder assembly in the recesses to support the feeder assembly with respect to the cage bottom (col. 5, lines 48-52), the cage bottom and feeder assembly working together to provide food and water to animals of different sizes.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-2,10** are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas (as above) in view of Applicant's admitted prior art (herein AAPA).

For claim 1, Thomas teaches a cage assembly as described above in claim 1. However, Thomas is silent about the floor having a length,  $l$  and a width  $w$  wherein  $80 \text{ in}^2 \leq l \times w \leq 110 \text{ in}^2$ .

AAPA submits on page 1 of the specification that one of ordinary skill in the art would recognize the floor area of a cage for laboratory animals to be a parameter that may be varied depending on, among other things, the type and number of animals intended to be housed in order to provide the animals with a hygienic and humane environment. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the floor of the cage of Thomas with the dimension range as listed above, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233

For claim 2, again, on page 1 of the specification, AAPA submits that "ILAR" guidelines set non-binding minimums for size and dimension of cages for rodents. For mice weighing more than 25 grams, a cage having a floor dimension of at least 15 square inches per mouse is required. Rats up to 400 grams in size require a cage having floor dimensions of at least 40 square inches per rat. Similar requirements are mandated for hamsters and guinea pigs by the AWA". Base on this evidence, it would have been obvious to one having ordinary skill in the art at the time the invention was

made to determine a set of dimensions for the floor area of Thomas' cage that would result in a floor area of 80 square inches in order to provide a cage having a floor area sufficient to accommodate two rats weighing up to 400 grams each to meet ILAR guidelines and the AWA as discussed by AAPA.

For claim 10, Thomas as modified by AAPA (emphasis on Thomas) further teach the feeder assembly comprises one or more selectively attachable components (the flanges around the whole feeder, near ref. 96) for adjusting the height of the feeder. The user would use flanges (fig. 3, near ref. 96) to lift the feeder assembly in or out of the cage bottom, thus, adjust the height of the feeder.

5. **Claims 3,8,9** are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 4,989,545 on form PT0-1449) in view of Coiro et al. (US 5,894,816 on form PT0-1449). See illustration above regarding the recesses.

For claim 3, in addition to the above, fig. 1 of Thomas teaches a double sided rack having a depth. However, Thomas are silent about the length of the cage being less than substantially 18 inches.

Coiro et al. disclose a cage level barrier cage comprising a cage bottom having an inner length L7 at the receptacle rim of about 11.4 inches (col. 5, lines 57-59) and an outer length L6 at rim of the receptacle of 11.75 inches (col. 4, lines 57-58). Based on this, the length of Coiro et al.'s cage is consider to be less than substantially 18 inches. It follows that the length of Coiro et al.'s cage is also "less than substantially 36 inches" as claimed by applicant in claim 6. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a cage level barrier cage as

taught by Coiro et al. in Thomas' double sided ventilated rack in order to provide a ventilated cage and rack system comprising cages having a usable floor space of 75 square inches, as taught by Coiro in col. 5, lines 60-63, to thereby accommodate up to five mice weighing 25 grams each, while retaining compatibility with existing wire bar lids and microbarrier tops as taught by Coiro in col. 3, lines 17-19.

For claim 8, please see the above paragraphs.

For claim 9, Thomas et al. as modified by Coiro et al. disclose the above features except a portion of the cage, when resting within the rack, extends beyond the rack. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a portion of the cage of Thomas et al. as modified by Coiro et al., when resting within the rack, extends beyond the rack depending on a chosen length one wishes to have (as long as it meets ILAR guidelines) because one of ordinary skill in the art would recognize the floor area of a cage for laboratory animals to be a parameter that may be varied depending on, among other things, the type and number of animals intended to be housed in order to provide the animals with a hygienic and humane environment.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

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1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. **Claims 1-3,8-19** are rejected on the ground of nonstatutory double patenting over claims 1-3,6-8,24,25 of U. S. Patent No. 6341581 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: both the present invention and US6341581 claim a cage bottom having a plurality of integral side walls with recesses therein, a floor and an open top; the cage bottom area of approximately 80 square inches; a feeder assembly having a frame, at least one support having an open lower end having a tab, a pair of flanges, and a snap on bottom having an upper lip and channel and an opening therein and forming a flush surface, the upper lip having a recess; the snap on bottom is a food container or a water bottle support.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

8. **Claims 1-3,8-19** are rejected on the ground of nonstatutory double patenting over **claims 1,8-12** of U. S. Patent No. 6336427 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: both the present invention and US6336 claim a cage bottom having a plurality of integral side walls with recesses therein, a floor and an open top; a feeder assembly having a frame, at least one support having an open lower end having a tab, a pair of flanges, and a snap on bottom having an upper lip and channel and an opening therein and forming a flush surface, the upper lip having a recess; the snap on bottom is a food container or a water bottle support.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

9. **Claims 1-3,8-19** are rejected on the ground of nonstatutory double patenting over **claims 1,3,8-12,30** of U. S. Patent No. 6041741 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: both the present invention and US6041741 claim a cage bottom having a plurality of integral side walls with recesses therein, a floor and an



open top; the cage bottom area of approximately 80 square inches; a feeder assembly having a frame, at least one support having an open lower end having a tab, a pair of flanges, and a snap on bottom having an upper lip and channel and an opening therein and forming a flush surface, the upper lip having a recess; the snap on bottom is a food container or a water bottle support

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1-3,8-11 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son T. Nguyen/  
Primary Examiner, Art Unit 3643